IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 306 OF 2004
IN
SUMMARY SUIT NO. 737 OF 2004

Bank of India .. Plaintiffs.

v/s.

Vinayak P. Hinge .. Defendant.

Mr. O.A. Das for the Plaintiffs.
Mr. Uday P. Warunjikar for the Defendant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 07th June 2005
PC :

1. Heard Shri Das for the plaintiffs and Shri Warunjikar, appearing for the defendant.

2. Shri Das submits that the dues of the Bank in the present summary suit arises out of an application made by the defendant for issuance of a Credit Card. He submits that it is not in dispute that a credit card facility was extended by the plaintiff bank to the defendant and the same has been utilised by the defendant. The procedure followed by the Bank in respect of such facility is set out in the plaint. In the submission of Shri Das under such a facility, the defendant is required to reimburse the plaintiffs all

charges, expenses etc., incurred by the usage of the credit card. The terms and conditions for extending such a facility have been put in writing. Shri Das submits that if the facility is extended and bills are raised, the amounts have to be reimbursed within a period of 15 days from the receipt of such bills, failing which, interest/ service charges are levied at the rate of 2.5% per month. Shri Das then submits that the defendant has used the said card facility and now unpaid principal amount is Rs. 14,901.00/-. Since this amount is not paid within time stipulated by the terms and conditions, interest is levied from 16th November, 2003. If such interest is added, total sum is Rs. 52,441.00/-. He submits that a Decree, therefore, be passed accordingly in favour of the plaintiff bank as there is no substantial defence disclosed in the affidavit by the defendant.

3. Shri Warunjikar on the other hand invited my attention to the averments in the affidavit in reply. He firstly submitted that the defendant is a resident of Pune and carries on his business from Pune. Shri Warunjikar next contends that the defendant has not been provided a credit card facility at Mumbai, as alleged in the plaint. On the other hand according to the defendant such a facility is extended at Pune itself. He contends that the card was handed over to

him at Pune and the application for issuance of the credit card was filled up by the defendant at Pune. The payment under the said facility has been made by the defendant to the plaintiffs at Laxmi Road Branch, Pune. He submits that the terms and conditions were signed in the premises of Laxmi Road Branch of the plaintiff at Pune and not at Mumbai. The entire cause of action has thus arisen at Pune and this court has no jurisdiction to entertain and try this suit. Shri Warunjikar submits that the only averment made in para 10 of the plaint that plaintiffs have a Head Office at Mumbai, would not confer jurisdiction on this court to try this suit. According to Shri Warunkikar, leave under clause XII of the Letters Patent Act being granted by this court, is liable to be revoked. Even otherwise, a triable issue pertaining to the jurisdiction of this court arises for consideration. Shri Warunjikar invites my attention to paras 4 to 6 of the affidavit in reply. He also raises the issue about liability to make payment of interest. He submits that the terms and conditions which are at Exh. ‘A’, include a stipulation of payment of interest, but at no point of time it was pressed into service and there is no condition either in the Application Form or otherwise that the defendant would have to abide by any of such terms and conditions. He submits that the averment pertaining to jurisdiction and interest have

to be pleaded in the plaint itself.

4. With the assistance of the learned counsel appearing for both the sides, I have perused the plaint and the annexures as well as the affidavits. The court while considering an application for leave to defend has to apply its mind and find out whether the facts disclosed on affidavit or otherwise are sufficient to grant leave to defend to the defendant, unconditionaly or upon such terms as may appear to the Court to be just and proper. The first proviso under Order XXXVII, Rule 3 (5) stipulates that the court shall not refuse leave to defend unless it is satisfied that the facts disclosed do not indicate that the defendant has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious. The second proviso, of course talks about deposit of any amount, if there is an admission of liability.

5. In the instant case, although leave under clause XII of the Letters Patent Appeal has been granted, so far as the jurisdiction of this court is concerned, the defendant by placing on affidavit certain facts, raises an issue as to whether material part of the cause action arose within the jurisdiction of this court. As to what constitues a material or

substantial part of action when the facility of credit -card is extended, will have to be gone into by this court. He discloses on affidavit a fact that credit card facility extended to him has been utilised and payments there under have been made to the plaintiffs branch office at Pune. In rejoinder, reliance is placed on the Application Form and a clause therein, pertaining to branch code. In my view, the defence raised about the jurisdiction of this court cannot be said to be totally frivolous or vexatious, but at the same time, I find no merit in the defence raised about the liability of payment of interest as the defendant himself as undertaken to the bank that he would be bound by the terms and conditions on which the facility is extended. All that is being contended that the facility has been extended at Pune but the liability to make payment is not denied, as rightly pointed by Mr. Das.

6. However, considering the totality of the circumstances, interest of justice would be subserved if the defendant is granted leave to defend the suit on deposit of Rs. 30,000/- in this court. The said deposit should be made within the period of 8 weeks from today. On the deposit of the aforesaid amount, it would be needless to mention that the same would be invested in fixed deposit, if permissible in the

plaintiff bank itself by the Registrar/ Prothonotary and Sr. Master of this court, for a period of two years initially.

7. The suit on such deposit shall be transferred to list of commercial causes with usual directions for filing written statement and list of documents etc.. Needless to observe that if the amount is not deposited within the time stipulated herein, further consequences provided in law shall follow.

8. Summons for judgement stands disposed of in the above terms.

(S.C.DHARMADHIKARI, J.)

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